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CHANGES TO TOLLING REQUIREMENTS IN MAP-21

By: Paul Frisman, Principal Analyst

You asked how the new federal highway law (Moving Ahead for Progress in the 21st Century or MAP-21 (P.L. 112-141)) affects tolling.

This report is based on a September 24, 2012 Federal Highway Administration (FHWA) summary of the changes MAP-21 makes to tolling provisions in prior law. FHWA is preparing additional tolling guidance documents.

SUMMARY

MAP-21, which expires September 30, 2014, eases some of the federal restrictions on tolling requirements. Among other things, it (1) expands tolling projects eligible for funding under the federal § 129 tolling program by incorporating certain provisions formerly included in toll pilot programs; (2) eliminates the requirement for certain tolling agreements, but retains existing restrictions on the use of toll revenue; (3) requires annual compliance audits; and (4) modifies some federal tolling pilot programs.

SECTION 129 TOLLING PROGRAM

MAP-21, signed into law by President Obama in July, 2012, took effect October 1, 2012 and expires September 30, 2014. It replaces the previous federal highway law ("SAFETEA-Lu"), under which federal funding was available for:

1. Building toll highways, bridges, and tunnels, including approaches, on non-Interstate highways;
2. Reconstructing, resurfacing, restoring, and rehabilitating existing toll facilities;
3. Reconstructing or replacing free bridges or tunnels and converting them to tolled facilities;
4. Reconstructing a free federal-aid highway (except for those on the Interstate system) and converting it to a tolled facility; and
5. Studying the feasibility of the above activities.

Expansion of Tolling Authority

MAP-21 expands tolling projects eligible for funding under the § 129 program, in part by incorporating some provisions from existing toll pilot programs. It allows tolling of newly-built lanes added to toll-free Interstates, as long as the highway has the same number of toll-free lanes after construction as it did before (excluding HOV and auxiliary lanes). This was previously authorized under SAFETEA-Lu's Express Lanes Demonstration program.

It also allows tolling for the initial construction of highways, bridges, and tunnels on the Interstate system. Before MAP-21, this authority was limited to non-Interstates. This MAP-21 provision effectively "mainstreams" the authority previously granted under the Interstate System Construction Toll Pilot Program.

Tolling Agreements and Restrictions on Use of Toll Revenue

MAP-21 eliminates the requirement for tolling agreements but retains § 129's restrictions on the use of toll revenue.

Under SAFETEA-Lu, states needed to enter into a tolling agreement with FHWA before imposing tolls on a federal-aid highway or using federal funds on an existing toll road. The agreement required that toll revenue be first used for specific purposes, including debt service, a reasonable return on investment for any private person financing a project, and the costs necessary to operate and maintain the toll road, including reconstruction, resurfacing, restoration, and rehabilitation. If the state annually certified that it was adequately maintaining the roadway, it could use excess toll revenue for any other purpose authorized by the federal highway law.

MAP-21 does not require these tolling agreements. However, it still generally limits the use of toll revenue to the uses specified in SAFETEA-Lu. In addition, in cases where a toll road is subject to a public-private partnership agreement, it requires the party holding the right to the toll revenue to use the revenue to pay the other party to the agreement.

MAP-21 also imposes a new requirement for annual compliance audits, the results of which must be submitted to the U.S. Department of Transportation (USDOT). If the USDOT secretary finds a state is not complying with the restrictions, he may order the tolls discontinued until the state complies.

HIGH OCCUPANCY VEHICLE/HIGH OCCUPANCY TOLL (HOV/HOT) LANES

Under SAFETEA-Lu, states could allow toll-paying vehicles that did not meet minimum occupancy standards to use HOV lanes. MAP-21 continues this authority. As under SAFETEA-Lu, states must annually certify to FHWA that they will meet all legal requirements, including those related to eligible vehicles; operational performance monitoring, evaluation, and reporting; and enforcement. The certification must show that the presence of HOT vehicles has not degraded the highway. In addition, states must indicate they have (1) a program that addresses how motorists can enroll and participate in the HOT program and (2) implemented, or will soon implement, automatic toll collection.

Under SAFETEA-Lu, states had to enter into a tolling agreement with FHWA before converting an HOV lane to a HOT lane. MAP-21 does not require these agreements. HOT lanes are subject to the changes MAP-21 made for § 129 programs, including annual compliance audits. MAP-21 also rescinds a prior requirement that states, when using excess toll revenue, give priority to projects for developing alternatives to single occupant vehicle travel and projects for improving highway safety.

PILOT PROGRAMS

MAP-21 modifies some of the four toll pilot programs.

Express Lanes Demonstration Program

This program, which allowed up to 15 projects designed to manage congestion and finance expansion of highway capacity by tolling new lanes added to an existing highway, expired on September 30, 2012. Five tolling programs begun under this pilot program will continue. Projects for which slots were reserved will proceed under § 129.

Interstate System Construction Toll Pilot Program

This program, which authorizes up to three facilities on the Interstate system to toll for the purpose of building new Interstate highways, has been “mainstreamed” under MAP-21. Consequently, FHWA says it will no longer accept applications for this pilot program because § 129 “allows a state to accomplish the same result with less administrative burden.” The program expires on August 9, 2015.

Interstate System Reconstruction and Rehabilitation Pilot Program

MAP-21 does not make any changes to this program, which allows the tolling of up to three existing Interstate facilities to pay for reconstruction or rehabilitation of Interstate highway corridors that could not otherwise be adequately maintained or improved. All three slots for this program are conditionally reserved for projects in Missouri (I-70), Virginia (I-95), and North Carolina (I-95).

Value Pricing Pilot Program

This program provides grants to states to conduct studies or pilot projects evaluating the potential of using electronic tolling and variable or congestion pricing (i.e., varying toll fees, such as by charging higher fees during rush hour) to help manage congestion on state highways. MAP-21 leaves the program in place, but does not provide any new funding for it.

Connecticut is currently engaged in two tolling studies funded through this program. One study is examining the feasibility of using electronic tolling and congestion pricing on I-84 in Hartford. A primary focus of this study is to evaluate the possibility of using toll revenue to help pay the costs of replacing the Hartford viaduct. The other study is evaluating electronic tolling and congestion pricing as a way to reduce congestion on I-95 between New Haven and New York. A key focus of this study is expected to be the feasibility of building express toll lanes on I-95 and financing them with toll revenue.

ADDITIONAL INFORMATION

More information on the effect of MAP-21 on tolls is available on the FHWA website at: <http://www.fhwa.dot.gov/map21/guidance/guidetoll.cfm> and <http://www.fhwa.dot.gov/map21/qandas/qatolling.cfm>.

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